

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KYLE W. DAVIS,

Plaintiff,

V.

VIC SAMUELSON,

**Defendant.**

Case No. C08-5078FDB

**ORDER DIRECTING PLAINTIFF  
TO SUBMIT AN AMENDED  
COMPLAINT OR SHOW CAUSE  
WHY MATTER SHOULD NOT  
BE SUMMARILY DISMISSED**

The Court, having reviewed plaintiff's application for IFP, complaint and the balance of the record contained herein, does hereby find and ORDER.

(l) A complaint is frivolous when it has no arguable basis in law or fact. Franklin v. Murphy, 745 F.2d 1221, 1228 (9th Cir. 1984). When a complaint is frivolous, fails to state a claim, or contains a complete defense to the action on its face, the court may dismiss an *in forma pauperis* complaint before service of process under 28 U.S.C. § 1915(d). Noll v. Carlson, 809 F.2d 1446, 575 (9th Cir. 1987) (*citing Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984)).

(2) Plaintiff's complaint appears to call into question the validity of his continued confinement at Western State's Forensics Unit, his underlying conviction and/or sentence. More specifically, Plaintiff is seeking release, as well as money damages, in the amount of \$50,000.00.

In June 1994, the United States Supreme Court held that "[e]ven a prisoner who has fully exhausted available state remedies has no cause of action under § 1983 unless and until the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus." Heck

1 v. Humphrey, 114 S.Ct. 2364, 2373 (1994). The court added:

2 Under our analysis the statute of limitations poses no difficulty while the state challenges are  
3 being pursued, since the § 1983 claim has not yet arisen. . . . [A] § 1983 cause of action for  
damages attributable to an unconstitutional conviction or sentence does not accrue until the  
conviction or sentence has been invalidated.

4 Id. at 2374.

5 Plaintiff necessarily claims call into question the legality of his confinement at Western State  
6 Hospital. Based on the above, such a claim should be first raised in a petition for writ of habeas corpus,  
7 not a § 1983 civil rights claim for money damages. Significantly, Plaintiff has not shown that he has  
8 previously successfully challenged the officer's actions by way of petition for writ of habeas corpus or  
9 similar challenges. Thus, it appears a claim for monetary damages is premature.

10 (3) Due to the deficiencies described above, the court will not rule on the pending IFP application  
11 and will not serve the complaint. Plaintiff shall file an amended complaint, curing, if possible, the above  
12 noted deficiencies, or show cause why this matter should not be dismissed **by no later than March 7,**  
13 **2008.** If an amended complaint is not timely filed or if plaintiff fails to adequately respond, the Court  
14 will recommend dismissal of this action as frivolous pursuant to 28 U.S.C. § 1915, and such dismissal  
15 will count as a "strike" under 28 U.S.C. § 1915(g).

16 (4) The Clerk is directed to send plaintiff a copy of this Order and the General Order  
17 DATED this 19<sup>th</sup> day of February, 2007.  
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20 */s/ J. Kelley Arnold*  
J. Kelley Arnold  
21 United States Magistrate Judge  
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